Supreme Court, U.S.
FILED

05-114 MAY 11 2005

OFFICE OF THE CLERK

In the

SUPREME COURT OF THE UNITED STATES

BEVERLY ANN HOLLIS-ARRINGTON

Petitioner,

Vs.

FANNIE MAE, CENDANT MORTGAGE CORPORATION, JUDGE CONSUELO B. MARSHALL, JUDGE STEVEN V. WILSON, JUDGE ANDREW KLEINFELD, JUDGE PAMELA D. REYMER, FIDELITY NATIONAL TITLE INSURANCE COMPANY, SUZANNE M. HANKINS, ET. AL.

Respondents

On petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR WRIT OF CERTIORARI

BEVERLY ANN HOLLIS-ARRINGTON
22912 Hartland Street
West Hills, Ca 91307
(818)999-3561

May 10, 2005

Petitioner In Pro Se

Questions presented

1. Whether the Court of Appeals must follow the precedent set by this Honorable Court?

2. Whether the Court Of Appeals must follow its own precedents.

3. Given the Congressional intent of the established jurisdiction of the United States Appeals Courts, as a court of review to the orders of a lower Court, did the appeals Court act properly by rewriting the order of the lower court to reflect what they believe the judge should have said, then rule on their own changes?

4. When a United States Judges have usurped his authority, and ignored the jurisdiction of the Court, codified in article III of the United States Constitution; and thereby lifting their immunity, followed by allegations of conspiring with the defendants, to corruptly fix the out come of three prior cases filed by this petitioner, by way of bribery; can this petitioner use denial of access as a precursor to a Constitutional claim of due process violation, consistent with this Honorable Courts holding in "Christopher v Harbury"?

5. Can the Court ignore its own precedent, and DC Code Ann. § 13-423(a) (1) set in "Second Amendment Foundation v United States Conference of Mayors, et. al., and refuse to accept personal jurisdictions of all defendants, based on an alleged conspiracy, with one defendant residing in the forum state, and the remain defendants acting as the agents of that defendant?

6. Can the court depart from the holdings of all Circuits, including its own, and rewrite the doctrine of res judicata, as they did in this case?

PARTIES TO PROCEEDINGS

Beverly Ann Hollis-Arrington is the petitioner, in pro se in this matter.

Respondents are: Fannie Mae, Cendant Mortgage Corporation, Fidelity National Title Insurance Company, Judge Consuelo B. Marshall, Judge Steven V. Wilson, Judge Pamela Rymer, Judge Andrew Kleinfeld, Judge Browning, Suzanne M. Hankins, esq., Robert O. Matthews, Conny B. McCormack (in her official capacity as register recorder for the County of Los Angeles)

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Attorneys For: Fannie Mae, Cendant Mortgage Corp. And, Suzanne M. Hankins, Esq.

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Scheuer v Rhodes, 416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S Ct. 1683 (1974) *overruled on other grounds, Davis v Scherer* 468 U.S. 183, 82 L. Ed. 2d. 139, 104 S. Ct. 3012 (1984).....5

Second Amendment Foundation v United States Conference of Mayors, et al., 348 U.S. App. D.C. 238; 274 F. 3d 521; 2001 U.S. App.....5

Taxpayers Watchdog, Inc v. Stanley, 819 F.2.d 294, 297 (D.C. Cir. 1987).....1

Warren Christopher, Former Secretary of State, Et Al, v Jennifer K. Harbury 536 U.S. 403; 122 S. Ct. 2179; 153 L ed. 2d 413.....1

Petition for Writ of Certiorari

Petitioner Beverly Ann Hollis-Arrington respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

Opinion Below

The Appeals Court issued an unpublished order on initial review/ 11-15-04 and on petition for rehearing en banc.

Jurisdiction

The Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1)

Constitutional and Statutory Provisions Involved

Article III of the U.S. Constitution

Fourteenth amendment of the U.S. Constitution

Statement of the Case

This petition seeks review of a decision of the United States Court of Appeals for the District of Columbia Circuit, rewriting the lower courts as "patently insubstantial" that it presents no federal questions suitable for disposition.

(a) Petitioner believes that the decision of the Court of Appeals is inconsistent with a controlling decision of this court in *Warren Christopher, Former Secretary of State, ET. Al. v. Jennifer K. Harbury.*

(b) Additionally, the congressional intent for the court of appeals is a court of review. The lower court's order dismisses the case based on res judicata, and lack of personal jurisdiction.

The appeals court states that the case is "Patently insubstantial" and that it presented no suitable question for deposition. Using *"Best v. Kelly, 39 F. 3d 328, 330 (D. C.) circuit,* as controlling law. There is no correlation between this case and the sighted case.

(c) Congress did not intend for the appeals court to rewrite a lower courts opinion, and then review its own findings.

(d) The lower court dismissed this case finding res judicata applied, even though petitioners claim for denial of access to the court did not accrue until the final case had been dismissed. There was never a claim for violations of my constitutionally protected right to due process, as a result of the denial of the petitioner's right of access to the court. However, on appeal, res judicata was not addressed in favor or rewriting the lower courts order, to a patently insubstantial, with no federal question present.

(e) The lower court sighted a lack of personal jurisdiction Personal jurisdiction to some defendants (assumingly the

judges), even though petitioner plead conspiracy to deprive her the right to due process, as well as depravation of due process. The appeals court did not address the issue of personal.

(f) Jurisdiction at all in favor of changing the ruling to no federal question presented. Totally ignoring D.C. Code Ann. § 13-423. Under the Districts long arm statute, a District court may exercise Personal Jurisdiction over a person, who acts directly or by agent, as to a claim for relief arising from the person's... transacting any business in the District of Columbia. The complaint alleges that the defendants acted as agents of Fannie Mae, who resides in the District of Columbia. The ruling is in conflict with the D.C. Circuits own precedents and the State code which governs the long arm statute.

Reason Why the Writ Should Be Granted

This petition should be granted for two principal reasons. First, the Court of appeals decision flatly conflicts with controlling Supreme Court, other circuits, Congressional intent, and their own precedents, and almost operates to negate the Congressional intent for which the appeals court was established. The conflict is that the Appeals court is suppose to review the orders of the lower court. If the Court has the ability to change the orders, then, summarily affirm their change, then, what happens to the petitioner's due process? Secondly this process in itself violates the constitutionally protected right to due process under the law.

THE ISSUES ARE OF EXCEPTIONAL IMPORTANCE TO EVERY ONE WHO COMES TO THE APPEALS COURTS

This is the first case to be adjudicated in any circuit in which Five United States Judges have intentionally acted outside their Constitutional authority of Federal Jurisdiction. Title three of the United States Constitution is clear, as to what matter can be heard in Federal Court. Jurisdiction was raised every step along the way to give each of the named judges a chance to return case number CV-02-6568 CBM, back to the court of proper jurisdiction. Each ignored federal jurisdiction, as granted in the United States Constitution, completely. This, I allege was done in aid of their co-conspirators. This makes this case one of first impression not only for the D.C. circuit but for all circuits. The three judge panel and the full Court chose to summarily dismiss this ugly matter at my constitutionally protected expense. This is a dangerous precedent to set, and

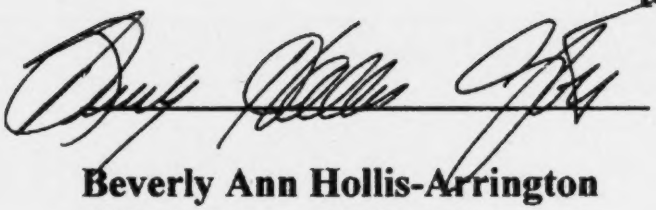
petitioner looks to this court for correction, no matter how ugly the allegations are. The law has not been correct, fairly, or properly applied here.

Judge Jackson's first line of defense in aid of his decision should have been that these judges are absolutely immured. The appeals court does not make this observation either. And here justice ignored, is justice denied. It was the express intent of Congress that the appeals court set in review of the lower courts orders, not rewrite and rule. This is a case of judges protecting their own, at the citizen's expense. Thereby making a mockery of everything we hold dear in this County.

CONCLUSION

For the foregoing reasons, the petition for writ of Certiorari should be granted.

Respectfully submitted,



Beverly Ann Hollis-Arrington
22912 Hartland Street
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Petitioner in Pro Se

APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5068 **September Term, 2004**

03cv02416

Filed On: February 11, 2005 [877461]

Beverly Ann Hollis-Arrington
Apellant

v.

Fannie Mae, et al.,
Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland,* and Roberts, Circuit Judges

ORDER

Upon consideration of apellant's petition for rehearing en banc, the supplements thereto, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Michael C. Mc Grail
Deputy Clerk

*Circuit Judge Garland did not participate in this matter

APPENDIX B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5608 **September Term, 2004**

03cv02416

Beverly Ann Hollis-Arrington,
Appelant

v.

Fanni Mae, et al.,
Appellees

BEFORE: Henderson, Rogers, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion for expedition and a stay and the supplements therto, the oppositions to the motion for expedition and a stay, the reply, the motions for summary affirmance, the opposition thereto, the reply, the motion for discovery, the opposition thereto, the reply, and the motion for depositions pending appeal, it is

ORDERED that the motion for discover and motion for depositions pending appeal be denied. It is

FURTHER ORDERED that the motions for summary affirmance be granted and that the district court's order filed

February 17, 2004 be summarily affirmed as to all appellees. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

The district court did not abuse its discretion in setting aside defaults against appellees Fidelity Title Insurance company and Robert O. Matthews for "good cause shown," see Fed. R. Civ. P. 55(c); Whelan v. Abell, 48 F.3d 1247, 1258-60 (D.C. Cir. 1995), in light of "the general federal policy against default judgments," see id. At 1258, and the appellees' sworn representations that (1) Fidelity was twenty-eight days late in responding to applellant's complaint due to the unexpected pregnancy complications of Fidelity's attorney, and (2) Matthews was never properly served with the complaint.

Moreover, the court properly dismissed appellant's complaint, as the complaint is so "patently insubstantial" that it "present(s) no federal question suitable for disposition." See Best v. Kelly, 39 F.3d 328, 330 (D.C. Cir. 1994) (citing Neitzke v. Williams, 490 U.S. 319, 327 n.6 (1989), and Hagans v. Lavine, 415 U.S. 528, 536-38 (1973)).

Finally, the court did not abuse its discretion in ruling that appellant may "file nothing further in relation to this case without leave of Court, other than a notice of appeal, and that any filings [she] attempts to make without leave of Court shall be deemed vexatious litigation and sanctioned accordingly." Dismissal Order at 2. Appellant had notice of, and an opportunity to be heard concerning, the appellees' request for a "vexatious litigant" order, she has a long history of filing meritless litigation concerning the foreclosure underlying this case, the filing restriction applies applies

only to this case and was imposed only after the case had been concluded, and it does not completely phohibit future filings, but merely requires appellant to obtain leave of court to make such filings. We therefore summarily affirm the district court's order in its entirety. It is

FURTHER ORDERED, on the court's own motion, that the motion for expedition and stay be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Bed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curium

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEVERLY ANN HOLLIS-ARRINGTON	)	
	)	
Pro Se Plaintiff	)	
	)	
v.	)	C.A. 03-2416 (TPJ)
	)	
FANNIE MAE, et al.,	)	
	)	
Defendants	)	
	)	

ORDER

Upon consideration of the motions to dismiss of defendants Cendant Mortgage, Fannie Mae, Suzanne Hankins, Robert O. Matthews, and Fidelity National Title Company, the plaintiff's opposition thereto, and the Court's independent review of the complaint, from which it appears abundantly clear that the majority of plaintiff's claims have been fully and fairly litigated to a decision on the merits in the United States District Court for the Central District of California and in the Ninth Circuit Court of Appeals and are thus barred by *res judicata*; that the remaining claims which have not been previously litigated have been asserted against defendants over whom this Court lacks *in personam* jurisdiction; that plaintiff has on multiple occasions attempted to relitigate these same issues;

and that defendants Fidelity National Title Company and Robert O. Matthews have shown good cause for their late filing; it is, this __17th___day of February, 2004,

ORDERED, that the entry of default against defendants Fidelity National Title Company and Robert O. Matthews, is set aside for good cause shown; and it is

FURTHER ORDERED, that the Complaint is dismissed with prejudice as to all defendants under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted; and it is

FURTHER ORDERED, that all remaining procedural motions are denied as moot; and it is

FURTHER ORDERED, that plaintiff shall file nothing further in relation to this case without leave of Court, other than a notice of appeal, and that any filings plaintiff attempts to make without leave of Court shall be deemed vexatious litigation and sanctioned accordingly.

/S/
Thomas Penfield Jackson
U.S. District Judge

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5068

BEVERLY ANN HOLLIS-ARRINGTON,
Petitioner

v.

FANNIE MAE: CENDANT MORTGAGE CORPORATION:
FIDELITY NATIONAL TITLE INSURANCE:
JUDGE CONSUELO B. MARSHALL *(IN HER INDIVIDUAL CAPACITY):* JUDGE STEVEN V. WILSON (*IN HIS INDIVIDUAL CAPACITY):* JUDGE ANDREW KLIENFILD *(IN HIS INDIVIDUAL CAPACITY):* JUDGE PAMALA RYMER (*IN HER INDIVIDUAL CAPICITY*):
JUDGE ROBERT BROWNING *(IN HIS INDIVIDUAL CAPACITY):*
SUZANNE M. HANKINS, ESQ.:
ROBERT O. MATTHEWS *(A-MARRIED MAN):*
CONNY B. MC CORMACK *(IN HER INDIVIDUAL AND OFFICIAL CAPACITY),*
RESPONDENTS

APPELLANTS-PETITIONER PETITION FOR HEARING EN BANC

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PETITIONER IN PRO SE

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I. EN BANC IS REQUIRED BECAUSE UNIQUE CIRCUMSTANCES IN THAT THE PANELS DECISION CONFLICTS WITH A DECISION OF THE UNITED STATES SUPREME COURT, THE DC APPEALS COURT AND ALL OTHER CIRCUITS

II. THE PROCEEDINGS INVOLVES A QUESTION OF EXCEPTIONAL IMPORTANCE, IN THAT A CONSTITUTIONAL QUESTIONS WAS PRESENTED TO THE LOWER COURT AND DISMISSED BY THE LOWER COURT, AND TOTALLY IGNORED BY THE PANEL. 3

III. THIS IS A CASE OF FIRST IMPRESSION AS OPPOSED OF TO THE STANDARD USED OF "WHOLLY INSUBSTANTIAL"

IV. THE PANEL ABANDONDED IT'S CONGRESSIONAL INTENT FOR THE APPEAL COURT TO SERVE AS ACOURT OF REVIEW IN THIS CASE

V. THE CONSTITUTIONAL ISSUE WHICH I PRESENTED WERE CLEARLY IRNORED IN FAVOR OR ATTEMPTING TO SAVE THE JUDGES

VI. APPENDIX "A" "B" "C" (AS TO RES JUDICATA) FACE SHEETS FROM CASES: cv-00-11125 CBM: Case: cv-01-5658 CBM: Case: cv-02-6568 CBM

VII. APPENDIX "D" (As to Vexatious Litigant) first 6 pages of docket sheet case number cv-00-11125

VIII. APPENDIX "E" (As to vexatious Litigant) order granting Cendants motion to dismiss on the baseless claim that Attorney Hankins was served with a waiver of summons and complaint instead of the actual service of an acknowledgement of summons and complaint

IX. APPENDIS "F" (As to vexatious litigant) record from the Los Angeles County recorder verifying that Fannie Mae and Cendant Mortgage has conducted a trustee sale on my then home in violation the an automatic stay one month before I filed the first action in the District Court, knowing that I had nothing to try to protect in the first instance and rendering the entire judicial process a horse and pony show.

X. APPENDIS "G" (As to vexatious litigant) notice of rescission of trustee's deed, filed by Fannie Mae and Cendant Mortgage 4 days after judge Marshall's ruling to re-vest title to me and hold a legitimate trustee sale on my then Home.

XI. APPENDIX "H" (As to vexatious litigant and lifting of Judge Marshall's immunity)

XII. CONCLUSION

TABLE OF CASES

Judicial Authority

Taxpayers Watchdog, Inc v. Stanley, **819 F.2.d 294, 297 (D.C. Cir. 1987)**

Maharaj v Bank of America Corp. 128 F3d. 94,97 (2d Cir. 1997

Bivens v Six Unknown Named Agents of federal Bureau of Narcotics **403 U.S 388, 29 L Ed. 2d 619, 91 S. Ct. 1999 (1971),**

Bieneman v City of Chicago, **864 F.2d 463, 469 (7th Cir. 1988)**

Best v Kelly **309 U.S. D.C 51; 39 F. 3d 328**

Warren Christopher, Former Secretary of State, Et Al, v Jennifer K. Harbury **536 U.S. 403; 122 S. Ct. 2179; 153 L Ed. 2d 413**

Melvin P. Deutsch v United States Department of Justice, ET. al., **881 F. Supp. 49; 1995 U.S. Dist.**

Conley v Gibson, **355 U.S. 41, 45-46, 2L Ed. 2d 80, 78 S Ct. 99 (1957)**

Maher v Durango Metals Inc., **144 F. 3d 1302, 1304 (10th Cir. 1998)**

Scheuer v Rhodes, **416 U.S. 232, 236, 40 L. Ed. 2d 90, 94 S Ct. 1683 (1974)** ***overruled on other grounds, Davis v Scherer*** **468 U.S. 183, 82 L. Ed. 2d. 139, 104 S. Ct. 3012 (1984)**

Davis v Passman, **442 U.S. 228, 60 L. Ed. 2d 846, 99 Ct. 2264 (1979)**

Second Amendment Foundation v United States Conference of Mayors, et al., **348 U. S. App. D.C. 238; 274 F. 3d 521; 2001 U.S. App.**

Rivet, et al., v Regions Bank of Louisiana et al., **522 U.S. 470; 118 S. Ct. 921**

***Posr A. Posr v Court Officer Shield # 207, Court Officer King Shield #6385, Sap 1 Clerk of the Court Wilson Perez, New York State Officer of the Court Administration, N.Y.C. Civil Court Judge Lila Gold, John Doe, Jane Doe* 180 F.3d 409; 1999 U.S. App.**

United States Constitution (Article III)

Statutory Authority

D.C. code § 13-423 (3)

PETITION FOR HEARING EN BANC

Appellant, Beverly Ann Hollis-Arrington, in the above entitled action, respectfully Petition for hearing en banc.

STATEMENT REQUIRED BY FED R. APP. P. 35(b)(1)

En banc review is appropiate because this case, which was decided by a panel of this court on November 15, 2004, involve multiple questions of exceptional importance – (1). Whether the complaint is a case of first impression, and as can it be summarily dismissed? (2). whether the panel has authority as a review panel, to abandon the legislated intent which governs the Court of appeals as a review court, in favor of deeming themselves as the court of original jurisdiction, and thereby changing the reasons for dismissal issued by the District Court, then re-writing their own dismissal order, and ruling on that dismissal order setting as a review panel. (3). Whether the panel can dismiss a Constitutional question for a civil rights violations under Bievens, as "Wholly Insubstantial" to shield and protect Judges (who did not file a responsive pleading and who immunity is lifted) whom I allege are a part of the allegations of corruption. The overt act bribery and resulting in injury to me? For unique reasons the panel refused to point to any "*stare decisis*" which would extinguish my claim under Bivens, arising from the denial of my access to the court.

PREFACE

With all due respect to the court, I wish to state the following: on or about November 20, 2004 I received the orders of the panel setting in review of the above-captioned case, which also contained and emergency motion and a motion to expedite. "NINE MONTHS" later, the panel of this court denies the motion and send me and order which completely passes on the allegations of the violations of my Constitutional rights. The panel instead found my Constitutional question "WHOLLY INSUBSTANTIAL" referring to them only as "THE REMAINDER OF THE CLAIMS", this done without any explanation, as to why a claim under could not be stated under Bivens. Totally missing from the courts review is the assertion of "TOTAL IMMUNITY" of the Judges who refused to plead, or make any assertion of immunity.

Therefore, concurrently with the filing of this motion in this court, I am mailing each member of the U.S. House judiciary committee/ on both sides of the isle, a copy of the orders from the review panel of this court, along with my petition for an en banc hearing. I have selected 15 newspapers in three different States to receive copies of the above-mentioned documents also. On Monday, November 29, 2004 I will send a copy of the documents to 7 well respected Constitutional professors of renowned universities to solicit a response from them on this question. Additionally, I have received permission from the advisory board of the "Citizens Political Lobby" of which I sit as President, to move forward with a protest march in

California to bring attention to, what I view as the Federal Judges total Un-accountability to any one, including the "PEOPLE" of the U.S. We have joined hands with many other groups interested in the integrity of Federal Judges and the courts, and they will join in our protest march. We are in the process of trying to limit the amount of people requesting to join in the protest for safety reasons.

I have taken these steps in an attempt to make sure that the judicial process in this case maintains the integrity in which the U.S. Constitution intended the courts and Judges, setting as guardians of the Constitution to maintain. Additionally, we want our position to be well documented, by our loud voices of disapproval, when of if it becomes necessary for me to petition the U.S. Supreme Court in my case. I make this statement with all due respect, but with the knowledge that something seems to have gone very wrong with the dispensing of justice in this case.

INTRODUCTION

At issue in this case is my claim of Constitutional violations by the defendants, and the denial of access to the court carried out by the defendants, in agreement with each other and by corruptly influencing the court to ignore my complaint, this based on the color or my skin (I am an African American female). The defendants acted in agreement with each other to carry this illegal scheme, and the overt act being bribery of 5 named United States Judges, and I suffered injury as a result

of this scheme. (I paint bribery with a wide brush, but within the meaning of USCS title 18) The attempt to shield the judges

THE GRAVESMAN OF THE D.C. COMPLAINT

I came to the District court in the instant action, in November 2003, with allegations that the defendants in the instant action, inter alia, hijacked case number CV-02 -6568CBM from the Superior Court in the State of California, with the help of Judge Consuelo B. Marshall. And that the adjudication by the Federal judges of the District court and the court of appeals in case number CV-02-06568 CBM was in violation of article III, of the United States Constitution as there was no Federal subject matter jurisdiction, jurisdiction being a threshold issue.

The Federal Court had no subject matter jurisdiction in case number CV-02-6568CBM, as all claims were State Claims, and Fannie Mae is "NOT" a government agency and my loan had no federal components. Remand was filed and jurisdiction was brought up every at juncture. However Jurisdiction of the Court of Appeals and the district court was never addressed and was ignored. Each defendant was ratified the acts of the other in the conspiracy to deny my Access to the court, and causing me injury, thereby depriving me of an opportunity To save my home, and resulting in Fannie Mae and Cendant Mortgage being able To take my home without due process of law, aided and ratified by the remaining Co-conspirator and in violation of the fifth amendment to the U.S. Constitution.

The case was corruptly hijacked from the court of proper jurisdiction, i.e. the States Superior Court, and illegally held hostage and illegally ruled upon in the

Federal Courts, by the Federal Judges named in the instant action. There was no diversity issue or federal question. My loan had no federal guarantees or Government interest. My loan was an "uninsured conventional loan".

I further alleged in my complaint to this court the judges named in this Complaint that their immunity was lifted once they ruled on case CV-026568 In violation of article III of the United States Constitution, in clear violation of Their jurisdiction. The Federal judges acted under the color of Federal law in Conspiracy with other named defendants, all of who ratified the acts of each Other, to illegally deny my access to the court, thereby, violating my constitutional Right to due process of law and the equal protection of the law. (Based on my race)

Judge Marshall, Judge Steven V. Wilson and the Judges of the 9th court of Appeals blocked my access to the court, by pretending to hear and adjudicate case number CV-00-11125 CBM; CV-01-5658CBM and CV-02-6568CBM, when in fact, Cendant Mortgage, Fannie Mae, and the non-government defendants, had, in the First instance, and initially with Judge Marshall, to corruptly fix the outcome of case CV-00-11125 CBM, before the first pleading was ever considered.

The bribery and conspiracy, in all three case resulted in the denial of my Constitutionally protected rights to the access of the court, the equal protection of the law and my right to Due process under the law. The denial of my Constitutionally protected rights to due process and the equal protection of the law were carried out as a result of the color of my skin. I am an African American

Female. And, as a result of these Constitutional violations, I suffered a loss.

AS TO SUMMARY AFFIRMATION

A party seeking summary disposition bears the heavy burden of establishing that the merit of his case are so clear that expedited action is justified. See Walker v Washington, 201 U.S. D.C 82, 627 F. 2d 292 (1980) .

Judge Jackson's orders dismissed the complaint based on the doctrine of res judicata or claims preclusion. Under the doctrine of claims preclusion '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Moitie, 452 U.S. at 398 also see Baker v General Motors Corp., 139 L. Ed. 2d 580, 118 S. Ct. 657; 1998 U.S.

While Judge Jackson state no case law to validate his erroneous position on my claims being barred by the doctrine of Res Judicata. Judge Jackson remarks that my claims appeal to have been fairly adjudicated by the district court and the 9th circuit court of appeal; however, there is no denial of access claim or civil rights claims based on Federal Actor, acting under the color of federal law in violation of Bivens . The preclusive effect of former litigation are commonly referred to as "res Judicata" "Migra v Warren City Dist. Bd of Education., 465 U.S. 75 , 77 n.1 (1984). "Res Judicata is often analyzed further to consist of two preclusion concepts: issue preclusion and claims preclusion" Id.

Denial of access to the court

The Supreme Court has held in Warren v Harbury 536 U.S.403*;122 S. Ct. 2179; 153 L. Ed. 2d 413, :**

The second category covers claims not I n aid of a class of suits yet to be litigated, but of specific cases that cannot now be tried (or tried with all material evidence, no matter what official may be in the future. The official acts claimed to have been access may allegedly have caused the loss or inadequate settlement of a mysterious case, e.g. Foster v Lake Jackson, 28, F. 3d. 425, 429 (ca5 (1994): Bell v. Milwaukee, 746 F. 2d 1205, 1261 (Ca7 1984) (the cover-up and resistance of the investigating police officers rendered hollow [the Plaintiff's right to seek redress.

Bivens v Six unknown named agents of the Federal Bureau of Nar.

The Judges did not plead their "Absolute Immunity" and their acts were in violation of my civil rights, additionally the illegal act of accepting a bribe cannot be said to be within the judicial duty of the court.

VEXATIOUS LITIGANT:

Although no court has determined that my claims were vexatious in nature, the panel states that I have a long history of maliously suing these defendants.

Appendix A, B, and C: represents the causes of actions for the three lawsuits for which the court determined res judicata.

Appendix "D" is the first six pages of the docket report in the very first action which I filed in October 2000. Entry 7 of the docket shows the acknowledgment of the summons and complaint signed by Attorney Hankins.

Appendix "E" is a copy of the court order setting aside Cendant's default, because Attorney Hankins plead that she signed a waiver of summons and complaint as opposed to an acknowledgement of summons. Even though the acknowledgement is a part of the record of the court and clearly docketed, Judge Marshall accepted attorney Hankins clearly erroneous contention.

Appendix "F" is a copy of the record at the Los Angeles county recorder and shows that before I even filed the first action, Cendant

under writing system. Even though, Cendant made my loan on the application in which I submitted to the and all the information I provided was true. Cendant's employee's with the approval figured out how to generate an accept score from the desk top underwriting system. This was done by manipulating true information and replacing it with false information, in other words loan fraud. And since I could not have had a part in the sale on the secondary market, it could not have been me who committed the loan fraud. Fannie Mae said that the loan fraud was ok unless the banker got caught, then they would have to repurchase the loan. If it were me I would be facing a jury.

FOR THE FOREGOING REASONS, I RESPECTFULLY REQUEST THAT THE COURT HEAR THIS CASE EN BANC AND REVERSE THE PANELS SUMMARY AFFIRMANCE SO THAT THE FIRST IPRESSION ISSUE CAN BE PROPERLY BRIEFED.

Date: November 27, 2004 **Respectfully submitted,**

_____

Beverly Ann Hollis-Arrington

Mortgage and Fannie Mae had held a trustee sale of my Home on September 18, 2000, in violation of a bankruptcy stay, this was one month before I filed case number CV-00-1125. Cendant and Fannie Mae knowing that the house was not even in my name at the filing of the lawsuit in October 2000. Misrepresented for the entire life of case number cv-00-11125 that the house was in my name and nothing stopped me from refinancing the property. This was a lie, they knew it and Judge Marshall later ruled that she did not care that they lied to the court and deceived me the entire time of the proceedings.

Appendix "F" is the recession of the foreclosure file by Cendant and Fannie Mae within a couple of days of Judge Marshall's order, they all knew in advance what the ruling would be, however, I filed another bankruptcy on the 6th of February, and they attempted the sale on the 8th of February. Needless to say when Ms. Hankins reported this to Judge Marshall she was absolutely livid.

Appendix "G" is a copy of a letter which Fannie Mae sent to Cendant Mortgage. The letter essentially documents that Cendant or one of their agent falsified my loan documents when putting them into the desktop

BEVERLY ANN HOLLIS-ARRINGTON
7106 MCLAREN AVE
WEST HILLS, CA 91307
TELEPHONE: 818-716-0572

PLAINTIFF IN PRO PER

CLERK, U.S. DISTRICT COURT
OCT 18 2000
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, vs. CENDANT MORTGAGE CORPORATION,, UNITED GUARANTY INSURANCE COMPANY., Defendant	Case No.: 00-11125 CBM (AJWx) VERIFIED COMPLAINT FOR: 1. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING 2. DECEIT 3. FRAUD 4. NEGLIGENCE 5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS "DEMAND FOR JURY TRIAL"

PLAINTIFF, BEVERLY ANN HOLLIS-ARRINGTON, MAKES THE FOLLOWING ALLEGATIONS IN SUPPORT OF HER VERIFIED COMPLAINT AGAINST THE AFOREMENTIONED DEFENDANTS AS FOLLOWS:

JURISDICTION AND VENUE

1. Under Title 28 section 1332, Diversity of Citizenship. And damages in excess of $50,000.00

5

BEVERLY ANN HOLLIS-ARRINGTON
22912 HARTLAND STREET
WEST HILLS, CA 91307
IN PRO SE
TEL: (818) 999-3561
FAX: (818)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, Vs. CENDANT MORTGAGE CORPORATION, FANNIE MAE, ATTORNEYS EQUITY SERVICE CORPORATION, Defendant(S)	Case No.: CV-01-5658CBM(AJWx) SECOND AMENDED VERIFIED COMPLAINT FOR: 1.) COMPLAINT UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT 2.) VIOLATION OF THE FEDERAL TRUTH IN LENDING ACT (TILA) 15 U.S.C. SECTIONS 1601, 1635 AND 1640 et. seq. AND REGULATION Z, 12 C.F.R. pt. 226. 3.) ENFORCEMENT OF RESCISSION ON PROPERTY LOCATED AT 7106 MCLAREN AVE. WEST HILLS, CA UNDER (TILA) 4.) VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA) 5.) CONSPIRACY TO VIOLATE RIGHT TO DUE PROCESS UNDER THE

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U.S. District Court
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:00-cv-11125-CBM-AJW

B A Hollis-Arrington v. Cendant Mortgage, et al
Assigned to: Judge Consuelo B. Marshall
Referred to: Discovery Andrew J. Wistrich
Demand: $1000000
Cause: 28:1332 Diversity-Other Contract

Date Filed: 10/18/2000
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Beverly Ann Hollis-Arrington

represented by **Beverly Ann Hollis-Arrington**
22912 Hartland St
West Hills, CA 91307
818-999-3561
PRO SE

V.

Defendant

Cendant Mortgage Corporation

represented by **Suzanne M Hankins**
Severson & Werson
Atrium Bldg
19100 Von Karman Ave, Ste 700
Irvine, CA 92612
949-442-7110
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

United Guaranty Insurance Company
esa
United Guaranty Residential Insurance Company

represented by **Jeffrey S Wruble**
Buchalter Nemer Fields & Younger
601 S Figueroa St, Ste 2400
Los Angeles, CA 90017-5704
213-891-0700
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ronald K Sittler
Buchalter Nemer Fields & Younger
601 S Figueroa St, Ste 2400
Los Angeles, CA 90017-5704
213-891-0700
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JURISDICTION AND VENUE

1. Plaintiff, Crystal Monique Lightfoot and Beverly Ann Hollis-Arrington are, and at all times herein mentioned were, residents of Los Angeles, County, California

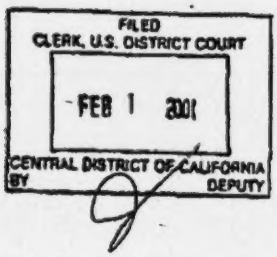
2. Defendant Cendant Mortgage Corporation, is, based upon the information and belief of Plaintiffs, a corporation organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the state of California.

3. Defendant Fannie Mae, is, based upon the information and belief of Plaintiffs, a private corporation, with a government charter, organized under, and existing by virtue of, the laws of an unknown state and is authorized to do business in the State of California with a corporate office located in Pasadena California.

4. Defendant Attorneys equity National Corporation, is, based upon the information and belief of Plaintiffs, a corporation existing by virtue of, the laws of an unknown state, and is authorized to do business in the State of California, with an office located in Lake Forest, California.

5. Defendant, Robert O. Matthews, is based upon information and belief of Plaintiffs, an individual, who purchased the property located at 7106 McLaren Ave, West Hills, California, from Ed Feldman and Harold Tennen, who were granted the

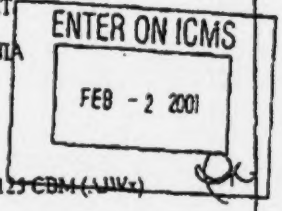
Priority ✓
Send ✓
Enter ___
Closed ___
JS-5/JS-6 ___
JS-2/JS-3 ___
Scan Only ___



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION



BEVERLY ANN HOLLIS-ARRINGTON, Plaintiff, vs. CENDANT MORTGAGE CORPORATION, UNITED GUARANTY INSURANCE COMPANY, Defendants.	No. CV 00-11123 CBM (AJWx) **ORDER RE:** **1) CENDANT'S MOTION TO SET ASIDE DEFAULT** [filed 12/28/00]; **2) UNITED GUARANTY'S MOTION TO SET ASIDE DEFAULT** [filed 1/8/01]; **3) PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT** [filed 12/18/00]; **4) REQUEST FOR JUDICIAL NOTICE** [filed 1/24/01]; and **5) EX PARTE APPLICATION FOR TRO** [filed 1/5/01]

The matters before the Court, the Honorable Consuelo B. Marshall, United States District Judge presiding, are: 1) Defendant Cendant Mortgage Corporation's ("Cendant") Motion to Set Aside Default; 2) Defendant United Guaranty Insurance Company's ("United Guaranty") Motion to Set Aside Default; 3) Plaintiff's Motion for Default Judgment; 4) Defendant Cendant's Request for Judicial Notice; and 5) Plaintiff's Ex Parte Application for a Temporary Restraining Order. Counsel appeared before the Court on January 29, 2001, Plaintiff appearing in pro per. Upon consideration of the papers and arguments presented, the Court: 1) GRANTS Cendant's Motion to Set Aside Default; 2) GRANTS United Guaranty's Motion to Set Aside Default; 3) DENIES

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Plaintiff's Motion for Default Judgment as MOOT; 4) TAKES Judicial Notice of all items; and 5) DENIES Plaintiff's Ex Parte Application for a TRO.

JURISDICTION

The Court has jurisdiction pursuant to 28 U.S.C. §1332. Venue is proper in this district pursuant to 28 U.S.C. §1391.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a loan to refinance an existing first and second mortgage on real property located at 7106 McClaren Avenue, West Hills, California (the "Property"). In August 1999, Cendant funded a loan in the amount of $180,400 on behalf of Plaintiff secured by the Property. In order to obtain the loan, Plaintiff represented that she earned $5,614.27 a month as a Senior Accountant employed by Kano Financial for approximately 3½ years. Plaintiff's first payment on the loan was to commence in September 1999.

Almost immediately after funding, Cendant sold the loan to the Federal National Mortgage Association ("Fannie Mae") in the secondary market. In September 1999, Fannie Mae asked Cendant to repurchase Plaintiff's loan because it failed to meet Fannie Mae requirements. Both Fannie Mae and Cendant determined that the loan was funded and sold based on unacceptable credit, inadequately documented employment and income, and missing documentation related to lawsuits involving Plaintiff. Specifically, Plaintiff's alleged employer was a business owned by Walter Arrington, Plaintiff's husband. Further, no federal income tax, FICA or Medicare had been withheld from Plaintiff's alleged paystubs, indicating that Plaintiff may have been self-employed.

Plaintiff's loan went into default in October 1999, allegedly due to heart problems and stress resulting from civil and criminal legal bills. In December 1999, Cendant contacted Plaintiff regarding payments arrears and provided Plaintiff with information regarding programs to assist in curing delinquency. Plaintiff indicated that she wanted to enter into a forbearance agreement to preclude foreclosure of the Property. In February 2000, Cendant acknowledged Plaintiff's request and sought additional information, including a financial statement and hardship letter. Plaintiff contends that she provided such information and that a Cendant

representative informed her that "all had gone well with her package and he had structured he [sic] payment to begin in June of 2000." Complaint, ¶14. In early May 2000, Cendant rejected the forbearance agreement based on Plaintiff's financial status and inability to provide a sufficient contribution to any forbearance. At that time, the non-judicial foreclosure sale was set for May 11, 2000.

On May 8, 2000, Plaintiff filed a Chapter 13 bankruptcy petition. On July 5, 2000, the court dismissed the petition for failure to make required payments without a 180 day restriction on making subsequent filings. Only July 11, 2000, Plaintiff filed another bankruptcy petition in response to Cendant's notice of a second sale date. On August 30, 2000, this petition was dismissed for failure to make required payments with a 180 day restriction on subsequent filings.

Plaintiff filed her Complaint on October 18, 2000, alleging the following causes of action: 1) breach of covenant of good faith and fair dealing; 2) deceit; 3) fraud; 4) negligence; and 5) intentional infliction of emotional distress. On September 18, 2000, a non-judicial foreclosure sale of the Property was held. On October 4, 2000, Cendant was first made aware that Plaintiff had transferred title of the Property to her daughter, Crystal M. Lightfoot, and that Lightfoot had filed a Chapter 13 bankruptcy petition on September 11, 2000. Lightfoot's bankruptcy petition was dismissed on October 24, 2000. Cendant voluntarily reversed the September 19, 2000 sale and another sale of the Property was scheduled for November 28, 2000. Cendant voluntarily postponed this sale date to January 11, 2001, based on Plaintiff's representations that she was in the process of obtaining a refinancing that would be completed within 30 days. Plaintiff has not secured refinancing of the loan to date.

Plaintiff filed proofs of service for Cendant on November 9, 2000 and for United Guaranty on November 14, 2000. Plaintiff unsuccessfully attempted to have default entered against Defendants on November 21, 2000. Default was entered against United Guaranty on November 27, 2000 and against Cendant on November 28, 2000. Neither Defendant had notice of the request for entry of default and both contacted Plaintiff in an effort to stipulate to set aside the default, but Plaintiff refused.

Cendant filed its Motion to Set Aside Default on December 28, 2000. Cendant also filed

an ex parte application for order shortening time to hear its Motion to Set Aside Default, or in the alternative, to advance the hearing to the next available date on December 22, 2000. The Court granted the ex parte application and reset the hearing for January 22, 2001. The hearing was subsequently continued to January 29, 2001 on the Court's own motion. Plaintiff filed her Opposition to Cendant's Motion to Set Aside Default on December 29, 2000. Cendant filed its Reply on January 22, 2001.

United Guaranty filed its Motion to Set Aside Default on January 8, 2001. The Court reset United Guaranty's motion to be heard concurrently with the other motions on January 29, 2001. Plaintiff filed an Opposition on January 18, 2001. United Guaranty filed its Reply on January 23, 2001.

Plaintiff filed her Motion for Default Judgment against Defendants on December 18, 2000. Cendant filed its Opposition on December 22, 2000. Plaintiff filed a Reply to Cendant's Opposition on December 29, 2000. United Guaranty did not file an Opposition.

Plaintiff filed an Ex Parte Application for a Temporary Restraining Order on January 5, 2001, seeking to restrain Cendant from proceeding with a trustee sale of her house on January 11, 2000. On January 10, 2001, the Court approved Cendant's proposed order postponing the foreclosure sale of the Property until February 6, 2001 and noticed the Ex Parte Application for hearing on January 29, 2001. Cendant filed an Opposition on January 12, 2001 and a Request for Judicial Notice on January 24, 2001. Plaintiff filed a Reply to Cendant's Opposition on January 24, 2001 and did not object to the Request for Judicial Notice.

DISCUSSION

I. Motion to Set Aside Default

A. Standard of Law

The Court may set aside an entry of default for good cause shown. Fed. R. Civ. P. 55(c). In determining whether to set aside entry of default, court could consider whether plaintiff would be prejudiced by setting aside default, whether defendant had meritorious defense, and whether defendant's culpable conduct led to the default. O'Connor v. State of Nev., 27 F.3d 357 (9th Cir. 1994). The district court's discretion is especially broad when it is setting aside an entry of

default under Rule 55(c) rather than setting aside a default judgment under Rule 60(b). However, the Court may be guided by the grounds in Rule 60(b). Brady v. United States of America, 211 F.3d 499, 502 (2000); Hawaii Carpenters' Trust Funds v. Stone, 794 F.2d 508, 513 (9th Cir.1986). Rule 60(b) provides that: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect..." Fed. R. Civ. P. 60(b).

B. Cendant

Pursuant to Fed.R.Civ.P. 4(d)(2), a plaintiff may notify a defendant of the commencement of an action and request that the defendant waive service. The notice and request "shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent." Fed.R.Civ.P. 4(d)(2)(F). Further, a defendant that timely returns a waiver is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent. Fed.R.Civ.P. 4(d)(3). Cendant received a Notice of Acknowledgment of Receipt of Summons and Complaint ("Notice") in early November, 2000, executed by Plaintiff on October 18, 2000. Assuming Plaintiff sent the Notice on October, 18, 2000, the 60 days within which to respond to the complaint would have expired on December 18, 2000. Therefore, the Clerk of Court prematurely entered the default against Cendant on November 29, 2000.

Based on the foregoing, the Court GRANTS Cendant's Motion and SETS ASIDE the Default against Cendant. Cendant is hereby ordered to file a responsive pleading forthwith.

C. United Guaranty

Plaintiff attempted to serve the summons and complaint on United Guaranty based on California's long arm statute, Code of Civil Procedure §415.40, which provides that a foreign defendant may be served certified first class mail, return receipt to the "person to be served." However, when the person to be served is a corporation, the complaint must be mailed to one of the persons authorized to receive service on behalf of a corporation, as enumerated in §416.10(b), including officers, directors and authorized agents. Dill v. Berquist Construction Co., 24

Cal.App.4th 1426, 1436 (1994).

Plaintiff failed to provide evidence that the person who received her package, Thomas Meyer, was authorized to accept service. United Guaranty submitted evidence that Mr. Meyer is not an employee of United Guaranty, nor is he authorized to accept service. Therefore, the entry of default against United Guaranty was in error.

Based on the foregoing, the Court GRANTS United Guaranty's Motion and SETS ASIDE the Default against United Guaranty. United Guaranty's proposed Answer shall be deemed filed forthwith.

II. Motion for Default Judgment

Since the Court has set aside the entries of default against Cendant and United Guaranty, the Court DENIES Plaintiff's Motion for Default Judgment as MOOT.

III. Request for Judicial Notice

Cendant requests that the Court take judicial notice of the following documents:

1. Certified copies of Plaintiff's Chapter 13 bankruptcy petition filed on May 8, 2000 in the United States Bankruptcy Court, In re: Beverly A. Hollis-Arrington, Case No. SV00-14478GM; the Order Closing Case and the Docket;
2. Certified copies of Plaintiff's Chapter 13 bankruptcy petition filed on July 11, 2000 in the United States Bankruptcy Court, In re: Beverly A. Hollis-Arrington, Case No. SV00-16423GM; the Order Closing Case and the Docket;
3. Certified copy of the Quitclaim Deed transferring title from Plaintiff to her daughter, Crystal M. Lightfoot, dated and recorded on September 11, 2000 in the Office of the County Recorder of Los Angeles County, California as Instrument No. 00-1422851; and
4. Certified copies of Lightfoot's Chapter 13 bankruptcy petition filed on September 14, 2000 in the United States Bankruptcy Court, In re: Crystal M. Lightfoot, Case No. SV00-18360AG; the Order Closing Case and the Docket.

Plaintiff did not object to the Request for Judicial Notice. The district court may take judicial notice of pleadings in earlier related proceedings in the litigation. Asdar Group v.

Pillsbury Madison & Sutro, 99 F.3d. 289, 290 n.1 (9th Cir. 1996). Therefore, the Court TAKES judicial notice of items one through four.

IV. Ex Parte Application for Temporary Restraining Order

Plaintiff filed her ex parte application for a TRO in anticipation of the January 11, 2001 foreclosure sale of her house. On January 9, 2001, Cendant agreed to postpone the foreclosure sale until February 6, 2001, pending resolution of the motions to set aside default and for default judgment. Although Plaintiff's original application is moot in light of Cendant's agreement to postpone the sale, the Court interprets Plaintiff's ex parte application as seeking to restrain the foreclosure sale set for February 6, 2001.

A. Standard of Law

To qualify for a preliminary injunction, the moving party must show either (a) a combination of probable success on the merits and the possibility of irreparable harm, or (b) that serious questions exist going to the merits and that the balance of hardships tips sharply in the movant's favor. Brookfield Comm., Inc. v. West Coast Entertainment Corp., 174 F.3d 1036 (9th Cir. 1999); Vision Sports, Inc. v. Melville Corp., 888 F.2d 609, 612 (9th Cir. 1989). The greater the threat of irreparable harm, the weaker the chance for success on the merits may be. See Dr. Seuss Enterprises, L.P. v. Penguin Books, 109 F.3d 1394, 1396 (9th Cir. 1997).

B. Likelihood of Success on the Merits

Plaintiff's complaint contains four causes of action: 1) breach of the covenant of good faith and fair dealing; 2) fraud and deceit; 3) negligence; and 4) intentional infliction of emotional distress. Read as a whole, Plaintiff's claims are predicated on the contention that Cendant agreed to provide Plaintiff with a forbearance agreement when she fell behind on her mortgage payments, and subsequently refused to enter in to such an agreement.

1. Breach of the covenant of good faith and fair dealing

"The prerequisite for any action for breach of the covenant of good faith and fair dealing is the existence of a contractual relationship between the parties, since the covenant is an implied term of the contract." Smith v. San Francisco, 225 Cal.App.3d 38, 49 (1990). The only contract Plaintiff and Cendant entered into is a note and deed of trust securing the note executed by

Plaintiff in return for the original loan proceeds. The deed provides for non-judicial foreclosure under the power of sale provisions in the event of default. As a general matter, implied terms should never be read to vary express terms. Carma Developers (Calif.) v. Marathon Dev. Calif., 2 Cal.4th 342, 372 (1992)("we are aware of no reported case in which a court has held the covenant of good faith may be read to prohibit a party from doing that which is expressly permitted by an agreement.") The deed of trust specifically states "Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property..." Hinkle Decl. Ex. 2.

2. Fraud and Deceit

"To maintain an action for deceit based on a false promise, one must specifically allege and prove, among other things, that the promisor did not intend to perform at the time he or she made the promise and that it was intended to deceive or induce the promisee to do or not do a particular thing." Tarmann v. State Farm Mut. Auto Ins. Co., 2 Cal.App.4th 153, 157 (1991)(citations omitted). The elements of a cause of action for fraud or deceit are: 1) a representation, usually of fact; 2) which is false; 3) knowledge of its falsity; 4) intent to defraud; 5) justifiable reliance upon the misrepresentation; and 6) damage resulting from that justifiable reliance. Stansfield v. Starkey, 220 Cal.App.3d 59, 72 (1990).

Plaintiff alleges that the promise of a forbearance agreement was made by Cendant in order to preclude Plaintiff from seeking other refinancing, or to have time to file a bankruptcy petition to forestall a trustee's sale. However, at no time during her default was Plaintiff precluded from seeking to refinance the Property through another lender. Plaintiff contends that Cendant did not offer a forbearance until April 10, 1000, at which time Plaintiff was already seven months in default on her payments. Plaintiff successfully filed a bankruptcy petition on May 8, 1999, forestalling the May 11, 2000 trustee's sale. Therefore, any alleged promise by Cendant did not preclude Plaintiff from seeking other refinancing or preclude the filing of a bankruptcy petition.

3. Negligence

In order to state a claim for negligence, Plaintiff must show that Cendant owed her a duty

of care. "The existence of a duty of care toward an interest of another worthy of legal protection is the essential prerequisite to a negligence cause of action, determined as a matter of law by the court." Software Design & Application, Ltd. v. Hoefer & Arnett, Inc. 49 Cal.App.4th 472, 478 (1996). With a duty of care, any injury is "damnum absque injuria - injury without wrong." Nally v. Grace Community Church, 47 Cal.3d 278, 292 (1988).

In California, a lending institution does not owe any duty of care to its borrowers when its involvement "does not exceed the scope of its conventional role as a mere lender of money." Nymark v. Heart Fed. Savings & Loan Assn., 231 Cal.App.3d 1089, 1096 (1991). In this case, every act alleged by Plaintiff in support of her negligence claim was within the scope of Cendant's role as a conventional lender. "It is simply not tortious for a commercial lender to lend money, take collateral, or to foreclose on collateral when a debt is not paid." Sierra-Bay Fed. Land Bank Assn. v. Superior Court, 227 Cal.App3d 818, 334 (1991). Accordingly, Plaintiff cannot show likelihood of success on the merits for her negligence claim.

4. **Intentional Infliction of Emotional Distress**

Similar to the other causes of action, Plaintiff's claims for emotional distress damages are based on Cendant's alleged promise to provide a forbearance agreement. However, "a preexisting contractual relationship, without more, will not support recovery for mental suffering where the defendant's tortious conduct has resulted only in economic injury to the plaintiff." Erlich v. Menezes, 21 Cal.4th 543, 549 (1999). Further, emotional distress damages in connection with property damages are not compensable. Id. at 551.

Even if Plaintiff could allege personal injuries to support a claim for intentional infliction of emotional distress, she must allege facts that show "extreme and outrageous" conduct by Cendant. Nally, 47 Cal.3d at 300. Plaintiff has not alleged that Cendant acted in a manner that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 888 (1992). The facts show that Cendant considered Plaintiff's request for a forbearance, reviewed the information provided by Plaintiff, and made a business decision that Plaintiff did not qualify for a forbearance agreement. Cendant "cannot be

subject to liability for infliction of emotional distress when it has merely pursued its own economic interests and asserted its legal rights." Terice v. Blue Cross of California, 209 Cal.App.3d 878 (1989). Cendant had a legal right to insist on timely payments pursuant to Plaintiff's loan obligations. Further, Cendant had a legal right expressly conferred by the deed to trust, to initiate a non-judicial foreclosure sale of the Property in the event that Plaintiff did not timely cure her default.

Since Plaintiff has not shown a likelihood of success on the merits, the Court DENIES Plaintiff's Ex Parte Application for a Temporary Restraining Order.

CONCLUSIONS

Based on the foregoing, the Court: 1) GRANTS Cendant's Motion to Set Aside Default; 2) GRANTS United Guaranty's Motion to Set Aside Default; 3) DENIES Plaintiff's for Default Judgment as MOOT; 4)TAKES Judicial Notice of items one through four; and 5) DENIES Plaintiff's Ex Parte Application for a TRO.

SO ORDERED.

DATE: 2/1, 2001

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

BENEFIT LAND TITLE INSURANCE CO.

RECORDING REQUESTED BY,
and WHEN RECORDED MAIL TO:

01 0211956

ATTORNEYS EQUITY
NATIONAL CORPORATION
23721 BIRTCHER DRIVE
LAKE FOREST, CA 92630

Loan# 3310216
T.S.# 42514-F

(47496)

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This notice of Rescission is made this 6TH day of FEBRUARY, 2001, with respect to the following:

1) That ATTORNEYS EQUITY NATIONAL CORPORATION is the duly appointed Trustee under that certain Deed of Trust dated 08/16/99 and recorded 08/23/99 as Instrument # 99-1576096, Book -----, Page ---- - wherein BEVERLY A. HOLLIS-ARRINGTON is/are named as Trustor(s), FIRST AMERICAN TITLE INSURANCE CO. is named as Trustee, and CENDANT MORTGAGE CORPORATION is named as Beneficiary

3) That the Deed of Trust encumbers real property in the County of LOS ANGELES, State of California, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

4) That by virtue of a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded 01/20/00 as Instrument # 00-80973, Book -----, Page ----- in the office of the County Recorder of LOS ANGELES County, California;

5) That the Trustee has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale which was conducted in error due to a failure to communicate timely, notice of conditions which would have warranted a cancellation of the foreclosure sale which did occur on 09/18/00;

6) That the express purpose of this Notice of Rescission is to return the priority and existence of all title and lien holders to the status quo-ante as existed prior to the trustee's sale.

Now therefore, the undersigned hereby rescinds the trustee's sale and purported Trustee's Deed Upon Sale dated 09/18/00 and recorded 09/21/00 as Instrument # 2000-1484793, Book , Page in LOS ANGELES County, California, from ATTORNEYS EQUITY NATIONAL CORPORATION (Trustee) to CENDANT MORTGAGE(Grantee) is hereby rescinded, and is and shall be of no force and effect whatsoever. The Deed of Trust dated

Source: Public Records > Public Records > Real Property Locator > Deed Transfer Records by State > CA Deed Transfers - Selected Counties
Terms: arrington, beverly (Edit Search)

Select for FOCUS™ or Delivery

LOS ANGELES COUNTY, CA 7106 MCLAREN AVE, LOS ANGELES, CA 91307

***** THIS DATA IS FOR INFORMATION PURPOSES ONLY *****

PROPERTY TRANSFER RECORD FOR LOS ANGELES COUNTY, CA

Buyer: CENDANT MTG CORP (Beneficiary)

Buyer Mailing Address: 6000 ATRIUM WAY, MOUNT LAUREL, NJ 08054

Seller: ARRINGTON, BEVERLY A HOLLIS (Trustor)

Property Address: 7106 MCLAREN AVE, LOS ANGELES, CA 91307

************************************ SALES INFORMATION**

Sale Date: 9/18/2000

Recorded Date: 9/21/2000

Sale Price: $ 200,282 (Full Amount)

Document Number: 00-1484793

Deed Type: TRUSTEE'S DEED - (CERTIFICATE OF TITLE)

Assessor's Parcel Number: 2026-003-013

Legal Description: CITY: LOS ANGELES

Brief Description: TRACT # 21399 LOT 52

************************************ MORTGAGE INFORMATION**

Title Company: BENEFIT LAND TITLE INS CO

************************************ PROPERTY DESCRIPTION**

Lot Size: 6900 SQ FT

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

Priority ✓
Send ✓
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 21 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED
CLERK, U.S. DISTRICT COURT
FEB 20 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

CRYSTAL MONIQUE LIGHTFOOT, BEVERLY ANN HOLLIS-ARRINGTON Plaintiffs v. CENDANT MORTGAGE CORPORATION dba PHH MORTGAGE, FANNIE MAE, ROBERT O. MATTHEWS, ATTORNEYS EQUITY NATIONAL CORPORATION, Defendants	No. CV 02-6568 CBM (AJWx) ORDER GRANTING DEFENDANTS CENDANT MORTGAGE CORPORATION, FANNIE MAE AND MATTHEWS' MOTIONS TO DISMISS; AND REQUEST FOR JUDICIAL NOTICE [Docket Nos. 10 and 12]

The matters before the Court, the Honorable Consuelo B. Marshall, Chief United States District Judge presiding, are (1) Defendants Fannie Mae and Cendant Mortgage Corporation's Motion to Dismiss (docket #12) and request for judicial

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notice (docket #13); and (2) Defendant Matthews' Motion to Dismiss (docket #10).

FEB 21 2003

(59)

08/16/99, and recorded 08/23/99 as Instrument # 99-1576096, Book ----, Page -----, is in full force and effect.

Date: 02/06/01

ATTORNEYS EQUITY NATIONAL CORPORATION

by: _____
DONNA WELLS
Vice President

STATE OF CALIFORNIA }
} ss.
COUNTY OF ORANGE }

On this 6TH day of FEBRUARY, 2001, before me, VERONIQUE LARA, a Notary Public in and for said County and State, personally appeared DONNA WELLS, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on this instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.
WITNESS my hand and official seal.

Signature: Veronique Lara (seal)

VERONIQUE LARA
COMM. #1225796
Notary Public-California
ORANGE COUNTY
My Comm. Exp. June 24, 2003

01 0211956

The Court GRANTS Defendants Motions to Dismiss after having considered the parties' papers and oral arguments.

JURISDICTION

Subject matter jurisdiction is based upon 28 U.S.C. §§ 1441 and 1446, and 12 U.S.C. § 1723(a) of the Fannie Mae Charter Act.

BACKGROUND OF INSTANT ACTION

The action concerns real property Plaintiffs Crystal Monique Lightfoot ("Lightfoot") (daughter) and Beverly Ann Hollis-Arrington ("Arrington") (mother) previously owned, but which was sold at a foreclosure sale. Arrington first purchased the property at issue. She financed the purchase with a mortgage from Cendant, who subsequently sold the mortgage to Fannie Mae, retaining servicing status. Cendant later repurchased the loan after Fannie Mae determined that the loan did not meet its criteria. Arrington defaulted on her first payment and failed to make any subsequent payments. She then sought a forbearance.[1] No forbearance was ever granted, and the loan was foreclosed. Thus, Plaintiffs allege deficiencies in the original financing of their purchase of the property and the subsequent foreclosure and foreclosure sale. Plaintiffs assert that they are the true owners of the real property, entitled to relief against lenders Cendant Mortgage Corporation ("Cendant") and Fannie Mae, as well as current record property owner Robert O. Matthews ("Matthews").

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On July 18, 2002, Plaintiff filed the instant action in Los Angeles Superior Court in case no: LC061596. Defendant Fannie Mae petitioned to remove the case

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[1] Arrington asserts that she was promised, then denied, a forbearance. Cendant asserts that it provided her with information about terms which she then failed to meet.

FannieMae

1900 Market Street
Suite 600
Philadelphia, PA 19103
phone 215 575 1400

August 29, 2000

Patricia Gallen
Manager Quality Control
Cendant Mortgage Corporation
6000 Atrium Way
Mount Laurel, New Jersey 08054

RE:		
	Fannie Mae Loan No.:	1673438358
	Lender ID No.:	172510000
	Lender Loan No.:	0003310216
	Mortgagor:	Beverly Hollis-Arrington
	Property Address:	7106 McLaren Street, West Hills, CA 91307

Dear Ms. Gallen:

We have found that a default in the early years of a loan may often be a result of underwriting deficiencies, misrepresentation, or closing errors. In addition, many of these loans do not meet our eligibility requirements. Consequently, as part of our quality control efforts, we review a selection of seriously delinquent loans, concentrating on early defaults. Our review of the documentation provided on the referenced loan has raised several areas of concern. Attached please find a detailed description of our findings.

Because the loan did not meet Fannie Mae requirements, we are asking that you repurchase it in accordance with the instructions in the Servicing Guide. To prevent additional expenses, the loan should be repurchased before foreclosure.

Please be assured that our repurchase decision was made after a very careful review and consideration of the loan package. If you wish to discuss our request, we welcome your comments as well as any additional information that might change our assessment of the underwriting of this loan, provided it is submitted to us within the next two weeks.

If you have any questions, please contact Anita Stokes at (215) 575-1471.

Sincerely,

Denise A. Lee
Vice President
Single-family Operations

Attachment

Employment and income inadequately documented: The loan application indicated that the borrower was employed by Kano Financial Services. Cendant's own quality control review reported findings regarding the employment, which would have made additional documentation of employment necessary. Included in these findings was the fact that Kano Financial Services was owned by a family member (the borrower's husband). Furthermore, the pay stubs included in the file reflected no withholding for federal income tax, FICA or Medicare. This indicated that the borrower could have been self-employed. In either case, the lender should have obtained a copy of the borrower's income tax returns to support the earnings. However, the file did not contain a copy of the borrower's income tax returns. Therefore, the borrower's employment and income were inadequately documented.

Missing documentation: In Section VIII of the loan application, the borrower disclosed that she was a party to a lawsuit. However, the loan file did not contain any documentation regarding the extent of the borrower's involvement in a lawsuit. Without this documentation, we were unable to fully analyze the eligibility and the risk of the subject loan due to any potential liability for the borrower.

Please contact your QC representative with any questions regarding the above issues.